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19  
20 UNITED STATES DISTRICT COURT  
21 CENTRAL DISTRICT OF CALIFORNIA

22 CHARMAINE CHUA, ET AL.

23 PLAINTIFFS,

24 VS.

25 CITY OF LOS ANGELES, ET AL.,

26 DEFENDANTS.

CASE No: 2:16-cv-00237-JAK-GJS(x)  
[HON. JOHN A. KRONSTADT]

[PROPOSED] FINAL APPROVAL  
ORDER

HEARING DATE: MARCH 16, 2020  
HEARING TIME: 8:30 A.M.  
COURTROOM: 10B

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**MEMORANDUM OF POINTS & AUTHORITIES**

**I. INTRODUCTION**

This lawsuit having come before this Court for a hearing, pursuant to this Court's Order Preliminarily Approving Proposed Settlement Between Plaintiffs and Defendant dated November 15, 2019 (the "Preliminary Approval Order," Dkt. 145) to consider and determine the matters set forth in the Preliminary Approval Order; and due notice of said hearing having been published and given, including their right to object or opt out; and the Court having considered the matter, including all papers filed in connection therewith, and the oral presentations of counsel at said hearing; and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

**II. DEFINITIONS**

1. "Damages Class Member" means all members of the damages class as defined above.

2. "Class Counsel" means the three firms certified as class counsel in the Court's August 26, 2013, class certification order (modified, where applicable, to reflect the current firm names): Kaye, McLane, Bednarski and Litt, LLP; Law Office of Carol A. Sobel; and Schonbrun Seplow Harris & Hoffman, LLP.

3. "Matters Alleged in the Lawsuit" refers to the claims for relief and allegations in the Complaint.

4. "Released Persons" means the Defendants and their affiliates, subsidiaries, predecessors, successors, and/or assigns, together with past, present and future officials, employees, representatives, attorneys, and/or agents.

5. "LAPD" refers to the Los Angeles Police Department.

6. "Class Notice" means the notice provided to class members as previously authorized by the court.

7. "Effective Date" means the date upon which the Order of Final Approval of Settlement ("Consent Judgment") entered by the Court approving the

1 Settlement Agreement becomes final. The settlement agreement provided that, if a  
2 class member objected to the settlement, the Consent Judgment will be deemed  
3 final upon expiration of the time to appeal or, if one or more Notices of Appeal  
4 were filed in the Ninth Circuit Court of Appeals, upon exhaustion of all such  
5 appeals and any petitions for writs of certiorari. It also provided that, if no class  
6 member objected to the settlement, the Consent Judgment would be deemed final  
7 upon its entry. Since no class member objected to the settlement, the effective date  
8 of the settlement is the date that judgment is entered.

9 8. An “Opt-Out” is any Damages Class Member who files a timely  
10 request for exclusion, pursuant to the terms of this Settlement Agreement, to be  
11 excluded from the Settlement Class. (If used as a verb, it refers to the process of  
12 filing such exclusion.) There were no opt-outs in this case.

13 9. “Proof of Claim Form” means the Proof of Claim and Release Form  
14 that Class Members used to make a claim for payment from the Class Fund, copies  
15 of which were attached to the previously submitted settlement agreement.

16 10. “Incentive Awards” refers to proposed incentive awards to the three  
17 class representative plaintiffs of \$5000.

18 11. The “Class Fund” is the monetary fund set aside for Class Members  
19 who file timely class claims. This fund is separate from the amount of the  
20 settlement for attorneys’ fees and costs. The Class Fund includes the following  
21 costs: expert costs (totaling \$20,210), mediation costs (totaling \$5500) and costs of  
22 class administration (allocated at a maximum of \$20,000 but actually amounting to  
23 \$4,121.49); incentive awards totaling \$15,000. (The remaining costs are included  
24 in the attorneys’ fee award, as provided by ¶ 12 of the settlement agreement.) After  
25 the foregoing costs and incentive awards, the parties have agreed that \$200,000,  
26 plus the difference between \$20,000 and the actual class fund cost (which has now  
27 been calculated to be \$15,878.51), will be distributed to the claiming class  
28

1 members.<sup>1</sup> The amount of the Class Fund inclusive of the foregoing expert,  
2 mediation, class administration costs and incentive awards is \$260,710.

3 12. “Attorneys’ Fees and Costs” are the attorneys’ fees and costs the  
4 Plaintiffs intend to request that the Court award Class Counsel pursuant to the  
5 statutory attorneys’ fee provisions of 42 U.S.C. §1988 and Civil Code §52.1(h).  
6 The parties have agreed to a figure of \$484,290 (inclusive of litigation costs other  
7 than the expert, mediation and class administration costs referred to in the  
8 preceding paragraph). Defendants agreed that Plaintiffs satisfy the prevailing party  
9 element for a motion pursuant to the settlement and further agreed that the  
10 \$484,290 figure is substantially discounted below the amounts that Plaintiffs would  
11 have sought in an attorneys’ fee motion as the prevailing parties in a contested  
12 motion.

13 13. The “Claim Cut-off Date”, which was January 30, 2020, is the date by  
14 which any Class Member who wishes to receive payment from the Class Fund  
15 must file his/her Proof of Claim Form (attached as the last page of Exhibit B).

16 14. The “Bar Date”, which was January 30, 2020, is the date by which  
17 any class member must file objections, if any, to this Settlement Agreement, or any  
18 class member must request exclusion from the settlement. A Class Member  
19 requests exclusion from the settlement by sending a request to the Administrator  
20 consistent with the terms of Section VII, *infra*.

21 15. The “Named Plaintiffs” or “Class Representatives” refers to the  
22 persons listed in the introductory paragraph to the settlement agreement (i.e.,  
23 Charmaine Chua, Torie Rivera and Lydia Hicks are “Class Representative  
24 Plaintiffs”; they and Kyle Todd are included in the term “Named Plaintiffs”).

25 16. “Preliminary Approval” is the Court's determination that the  
26 Settlement is within the range of possible approval and therefore that a notice  
27

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28 <sup>1</sup> Kyle Todd is an individual Plaintiff only and is not part of the 6<sup>th</sup> and Hope class. He will  
receive \$5000 as part of the overall settlement.

1 should be sent to the Class and a hearing should be held with respect to fairness.

2 17. The “Preliminary Approval Order” is the order entered by the Court  
3 preliminarily approving the settlement, after which Class Notice, the opportunity to  
4 object and opt out, and a Final Approval hearing occurred. (See Dkt. 145.)

5 18. A “Settlement Class Member” (“SCM”) means any member of the  
6 Damages Class as defined above (whether or not s/he files a Timely Claim form),  
7 including representatives, successors and assigns, who does not file a valid and  
8 timely Request for Exclusion as provided for in this Settlement Agreement.

9 19. A “Timely Claim” is one filed a) within the claim cut-off date set by  
10 the Court, and b) to the extent the Court approves, late claims (i.e., claims filed  
11 after the Class Notice period) that are filed prior to the Final Approval Hearing.

### 12 **III. OBJECTIONS AND OPT-OUTS**

13 20. There have been no objections to the settlement in general, no  
14 objection to the request for an award of attorneys’ fees filed, and no opt outs from  
15 the settlement. Prior to class notice, two class members had filed individual  
16 lawsuits, which were separately settled. (Declaration of Carol Sobel.)

### 17 **IV. THE CLASS**

18 21. Over the objection of Defendants, the Court certified a 6<sup>th</sup> and Hope  
19 class defined as approximately 130 persons who were detained and arrested at 6<sup>th</sup>  
20 and Hope Streets on November 26, 2014, denied release on their own recognizance  
21 but never prosecuted. The class representatives were Plaintiffs Chua, Hicks and  
22 Rivera. Certification Order, p.5 (Dkt. 50).

23 22. Plaintiffs alleged that their detentions and arrests were unlawful under  
24 the First and Fourth Amendments to the United States Constitution and that the  
25 refusal to release class members OR violated Penal Code §853.6, and that these  
26 actions were pursuant to LAPD policy. They also alleged violations of Calif. Civil  
27 Code §52.1.

1 **V. CLAIMS FILED**

2 23. A total of 112 claim forms were sent to class members by the Class  
3 Administrator. Addresses could not be located for 15 class members, to whom  
4 such notices were accordingly not sent. A total of 85 timely claims were filed.  
5 There were no late claims. Thus, the claims made represent approximately 75% of  
6 class members reached. (Sobel Dec.)

7 **VI. SETTLEMENT AGREEMENT FAIR, ADEQUATE AND**  
8 **REASONABLE**

9 24. The settlement of this lawsuit was not the product of collusion  
10 between Plaintiffs and Defendants or their respective counsel, but rather was the  
11 result of bona fide and arm's-length negotiation conducted in good faith by the  
12 parties and their counsel, with the assistance of an independent mediator, who is a  
13 sitting United States Magistrate Judge. The final settlement was reached between  
14 the parties directly shortly before intensive trial preparation was to begin.

15 25. The Settlement Agreement and the settlement set forth therein are  
16 hereby approved and found to be fair, adequate, reasonable, in the best interest of  
17 the Class as a whole, and in satisfaction of Rule 23 of the Federal Rules of Civil  
18 Procedure and due process requirements.

19 26. The financial terms of the settlement are favorable to class members.  
20 Every class member receives in excess of \$2500. Plaintiffs' counsel, who are  
21 highly experienced in cases of this type, assessed that this case carried greater risk  
22 than other protest cases because the issues of the lawfulness and audibility of the  
23 unlawful assembly order was highly contested, and Defendants claimed that they  
24 did not deny OR release but rather needed the time to process the arrestees before  
25 releasing them. While Plaintiffs' counsel believed they had a strong claim, they  
26 considered this claim to be considerably more subject to dispute than other cases  
27 they handled. Plaintiffs' counsel concluded that a recovery of between \$1500-  
28 \$2000 per claiming class member was a fair settlement given the disputed nature of



1 the claim and that all class members were released within 18 hours in contrast to  
2 longer detentions in other cases. (Litt Prelim. App. Dec. ¶ 9.) The actual recovery  
3 per claiming class member well exceeds that amount.

4 27. The settlement is supported by highly experienced Class Counsel,  
5 who thoroughly investigated the case, successfully litigated the class' certification  
6 over objection, analyzed extensive documentary and video evidence, submitted  
7 several expert reports and conducted several depositions. See, e.g., Attorneys' Fee  
8 Declaration of Carol Sobel, ¶ 6, 17-18 (Dkt. 149); Preliminary Approval Order, p.  
9 6 (Dkt. 145) ("Plaintiffs' counsel "conducted extensive discovery" about the  
10 protests and retained experts to evaluate the propriety of police actions. *See* (Dkt.  
11 131 at 12-13); Litt. Decl., (Dkt. 132 ¶5); Sobel Decl., (Dkt. 133.) The City  
12 produced 50 disks on which approximately four gigabytes of data was maintained  
13 related to the incidents underlying this action. Sobel Decl., (Dkt. 133 ¶10).  
14 Plaintiffs and Defendants "took depositions and responded to extensive discovery  
15 requests from the other side. (Dkt. 133 ¶11). This shows that the parties had  
16 substantial and sufficient information to make informed decisions about a  
17 reasonable settlement. Therefore, this factor supports preliminary approval of the  
18 settlement.")

## 19 **VII. NOTICE**

20 28. As required by this Court in its Preliminary Approval Order, Class  
21 Notices were sent by the Class Administrator to all persons identified from law  
22 enforcement records as class members, and extensive outreach was done through  
23 email outreach.

24 29. The notice given to the Class Members is hereby determined to be  
25 fully in compliance with the requirements of Rule 23 of the Federal Rules of Civil  
26 Procedure and due process and is found to be the best notice practicable under the  
27 circumstances and to constitute due and sufficient notice to all parties entitled  
28 thereto.

1           30. Due and adequate notice of the proceedings having been given to the  
2 Class and a full opportunity having been offered to the Class to participate in this  
3 hearing, it is hereby determined that all Class Members are bound by this Final  
4 Order of Approval and Settlement.

5 **VIII. TERMS OF PAYMENTS FROM THE CLASS FUND**

6           31. The class settlement's basic terms are as follows:

7           a. A Class Fund of \$255,010 to be paid as follows:

8                   i. expert costs (totaling \$20,210) to be paid to the Client Trust  
9                   Account of the Law Office of Carol Sobel;

10                  ii. mediation costs (totaling \$5500) to be paid to the Client Trust  
11                  Account of the Law Office of Carol Sobel;

12                  iii. incentive awards to the three class representatives of \$5000  
13                  each to be paid to the Client Trust Account of the Law Office of  
14                  Carol Sobel (for a total of \$15,000);

15                  iv. class administration costs of a flat fee of \$20,000 to be paid to  
16                  the Law Office of Carol Sobel, inclusive of all cost of mailing  
17                  and reporting; and

18                  v. \$200,000 for distribution pro rata to claiming class members to  
19                  be paid to the Client Trust Account of the Law Office of Carol  
20                  Sobel.

21           b. \$484,290 (inclusive of \$7,163.27 in litigation costs other than the  
22 expert, mediation and class administration costs) as compensation for statutory  
23 attorneys' fees and costs (subject to the approval of the court), to be paid to the  
24 Client Trust Account of the Law Office of Carol Sobel, and to be the subject of a  
25 separate motion for attorneys' fees pursuant to 42 U.S.C. §1988 and Civil Code  
26 §52.1(h). For purposes of this settlement, Defendants agreed that Plaintiffs are  
27 the prevailing party under the foregoing statutes for a motion pursuant to this  
28 settlement and further agreed that \$476,801.93 (the portion of the fees and costs

constituting fees) is substantially discounted below the amounts that Plaintiffs would have sought in an attorneys' fee motion as the prevailing parties in a contested motion. Plaintiffs' motion for attorneys' fees has been separately filed (with a separate proposed order) and seeks an award of that amount.

c. \$5000 to Todd Kyle as compensation for his individual claim paid to the Client Trust Account of the Law Office of Carol Sobel.

32. Because up to \$20,000 was allocated to class administration, there is an additional \$15,878.51 to supplement the class fund payable to class members.

33. The following chart shows how the funds would be disbursed under the settlement agreement in light of this final accounting.

DESCRIPTION	AMOUNT
KYLE TODD RECOVERY	\$5000
COSTS (MEDIATION/EXPERT) FROM CLASS FUND	\$25,710
TOTAL CLASS ADMINISTRATIVE COSTS	\$4,121.49
INCENTIVE PAYMENTS	\$15,000
CLASS FUND FOR DISTRIBUTION TO CLASS MEMBERS (INCLUDING UNUSED CLASS ADMIN FUNDS OF \$15,878.51 FROM THE \$20,000 ALLOCATED)	\$215,878.51
FEES AND COSTS (COSTS IN ADDITION TO MEDIATION EXPERT COSTS PAID BY CLASS FUND)	\$484,290
TOTAL	\$750,000.00
TOTAL # CLAIMS FILED	85
AMOUNT PER CLASS MEMBER (AFTER ALL COSTS AND INCENTIVE FEES)	\$2539.74

34. The Court finds that the proposed \$5000 incentive awards are justified and consistent with well-established law. In the preliminary approval order, the Court noted evidence of a "conservative estimate of 50 hours per named plaintiff" as of that time and found that to be reasonable subject to further review at final approval, "including with respect to any objections that are filed." No class member objected to the proposed incentive awards.

1           35. Incentive “awards are discretionary, *see In re Mego Fin. Corp. Sec.*  
2 *Litig.*, 213 F.3d 454, 463 (9th Cir.2000), and are intended to compensate class  
3 representatives for work done on behalf of the class, to make up for financial or  
4 reputational risk undertaken in bringing the action, and, sometimes, to recognize  
5 their willingness to act as a private attorney general. Awards are generally sought  
6 after a settlement or verdict has been achieved.” *Rodriguez v. W. Publ'g Corp.*, 563  
7 F.3d 948, 958-59 (9th Cir. 2009). Recent studies indicate that incentive awards  
8 occur in 71.3% of all class cases, and that their frequency has risen in recent years.  
9 *5 Newberg on Class Actions* §17:7 (5th ed.) (“*Newberg*”).

10           36. The proposed \$5,000 incentive award, in addition to the amount to  
11 which they are entitled under the Settlement Agreement, is supported by the  
12 empirical data. *See, e.g., In re LIBOR-Based Financial Instruments Antitrust*  
13 *Litigation*, 2018-2 Trade Cas. 2018 WL 3863445, at \*2 (S.D. N.Y. 2018) (citing  
14 *Newberg*) (“[E]mpirical studies have shown that, in recent years, the median  
15 incentive award per plaintiff is approximately \$5,000 and the mean incentive  
16 award is approximately \$12,000.”). *See also, e.g., Weeks v. Kellogg Co.*, No. CV  
17 09-08102 MMM RZX, 2013 WL 6531177, at 37 (C.D. Cal. Nov. 23, 2013) (“An  
18 incentive award of \$5,000 per class representative is in line with other awards  
19 approved in this circuit.”); *Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at \*16  
20 (N.D.Cal. Jan.26, 2007) (approving payments of \$25,000 to each named plaintiff);  
21 *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D.Cal.1995)  
22 (awarding \$50,000 to a lead plaintiff).<sup>2</sup>

23           37. The Class Administrator shall have sole responsibility for distribution  
24 of the Class Fund to class members. To the extent that valid claims are filed, but

---

25  
26 <sup>2</sup> Kyle Todd is not strictly a class representative and does not receive any portion  
27 of the Class Fund. However, given the recovery of the average class member, and  
28 the fact that he is an individually named plaintiff who could prove individual  
emotional distress damages, an allocation of \$5000 as his damages award is  
reasonable.

1 the checks issued pursuant to such claims are not cashed, the funds for that person  
2 shall be held in the Client Trust Account of the Law Office of Carol Sobel for one  
3 year, after which it will be donated to an agreed upon designated *cy pres*  
4 organization.

5 **IX. CLASS ADMINISTRATOR**

6 38. The Law Office of Carol Sobel acted as the Class Administrator. Ms.  
7 Sobel's office has performed all tasks required of it under the settlement agreement  
8 and the preliminary approval order.

9 39. At the conclusion of the Class Distribution, the Class Administrator  
10 shall submit a report to the Court summarizing the payments made to the Class.

11 **X. ATTORNEYS' FEES**

12 40. The Court finds that a) this was a complex case involving significant  
13 risks due to the uncertainty of Plaintiffs' prevailing in light of uncharted First  
14 Amendment issues, the absence of law addressing the standards for OR release  
15 under Penal Code §853.6 and the significant factual disputes, in addition to the  
16 normal significant risk in *Monell* and class litigation; b) significant effort was  
17 required to maintain contact with as many class members as possible; c) it was  
18 difficult to reach a settlement, no settlement was reached after two mediation  
19 sessions, and only as trial preparation loomed did the parties directly reach a  
20 settlement; d) substantial effort was expended by counsel – including, for example  
21 disputed motions to dismiss and for class certification, independent investigation,  
22 substantial discovery and document review, submission of several expert reports,  
23 settlement, and preliminary and now final approval motions – and although there  
24 were significant efforts by the most experienced counsel, appropriate division of  
25 labor occurred assigning appropriate work to the less experienced attorneys; e)  
26 class counsel are highly experienced and skilled in cases of this type; and f)  
27 substantial sums were recovered for class members (exceeding \$2500 for those  
28 who filed claims), which Plaintiffs' counsel consider a very good result, given the

1 risk of loss.

2 41. As noted above, the reaction of the class is favorable, and there is a  
3 high claim rate and no objections or opt outs.

4 42. Although the recovery in attorneys' fees exceeds the total recovery  
5 being paid to the class, proportionality of fees to client recovery is not the standard  
6 to determine the fees to be awarded; rather, the reasonableness of the fee is. Here,  
7 as indicated, Counsel obtained an excellent recovery for class members. Where  
8 counsel has expended significant effort that was reasonable, the fact that their fees  
9 exceed the financial recovery is not an impediment to an award of fees. *See, e.g.,*  
10 *City of Riverside v. Rivera*, 477 U.S. 561, 575-77, 106 S. Ct. 2686, 91 L. Ed. 2d  
11 466 (1986) ("damages awards do not reflect fully the public benefit advanced by  
12 civil rights litigation, Congress did not intend for fees in civil rights cases, unlike  
13 most private law cases, to depend on obtaining substantial monetary relief";  
14 Congress recognized that the normal contingent fee arrangements made in personal  
15 injury cases "would often not encourage lawyers to accept civil rights cases, which  
16 frequently involve substantial expenditures of time and effort but produce only  
17 small monetary recoveries" and intended that fee awards "be governed by the same  
18 standards which prevail in other types of equally complex Federal litigation, such  
19 as antitrust cases"); *Morales v. City of San Rafael*, 96 F.3d 359, 365 (9th Cir.  
20 1996); *Quesada v. Thomason*, 850 F.2d 537, 539 (9th Cir.1988); *Fair Hous. of*  
21 *Marin v. Combs*, 285 F.3d 899, 907 (9th Cir. 2002).

22 43. This principle applies in the class action context as well. Statutory  
23 fees are available in class actions, just as they are in individual cases with statutory  
24 fee provisions. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 972 (9th Cir. 2003)  
25 ("in a class action involving both a statutory fee-shifting provision and an actual or  
26 putative common fund, the parties may negotiate and settle the amount of statutory  
27 fees along with the merits of the case, ...[and] the amount of such attorney's fees  
28 can be approved if they meet the reasonableness standard when measured

1 against statutory fee principles”); *In re Bluetooth Headset Prod. Liab. Litig.*, 654  
2 F.3d 935, 941 (9th Cir. 2011),

3 44. The principle that reasonable statutory fees are available in class  
4 action as well as individual actions is well established. In *In re Gen. Motors Corp.*  
5 *Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995) (cited  
6 favorably in *In re Bluetooth Headset Prod. Liab. Litig.*, *supra*), the Court explained  
7 that “the lodestar method...[is] the appropriate method in statutory fee shifting  
8 cases...[including in class actions.] *Because the lodestar award is de-coupled from*  
9 *the class recovery, the lodestar assures counsel undertaking socially beneficial*  
10 *litigation (as legislatively identified by the statutory fee shifting provision) an*  
11 *adequate fee irrespective of the monetary value of the final relief achieved for the*  
12 *class.*” (Emphasis supplied.) *See also, e.g., Prandini v. Nat'l Tea Co.*, 585 F.2d 47,  
13 53 (3d Cir. 1978) (negotiated statutory fee exceeding monetary recovery because,  
14 “unlike a common fund award,” the attorney’s fees award would not “reduce the  
15 plaintiffs’ recovery...[, the] fee award made here may be analyzed on the same  
16 terms as a statutory fee award, which the defendant would pay, and which would  
17 not in any way affect or reduce the plaintiffs’ award” ); *Newberg*, §15.93 (citing  
18 *Prandini* and noting “fees that are paid to class counsel for the time they spend  
19 pursuing attorney’s fees for the underlying case” are compensable in class fee  
20 claims based on a statutory fee, in contrast to a pure class fund fee award);  
21 *Donovan v. CSEA Local Union 1000, American Federation of State, County and*  
22 *Municipal Employees, AFL-CIO*, 784 F.2d 98, 106 (2d Cir. 1986) (allowing  
23 for fees-on-fees in a class action fee-shifting case and carefully distinguishing it  
24 from common fund cases, where such fees-on-fees are not appropriate).

25 45. Thus, courts have awarded lodestar-based fees independent, and in  
26 excess, of the amount of class damages based on fee shifting statutes (or contracts).  
27 *See, e.g., Owner-Operator Indep. Drivers Ass’n, Inc. v. Mayflower Transit, Inc.*,  
28 659 F. Supp. 2d 1016 (S.D. Ind. 2009) (class action under Truth in Lending



1 statutes where class members received \$194,220.98 [236 claims filed out of  
2 possible 3200 “potential claimants”]; granting statutory attorneys’ fees and costs in  
3 the amount of \$1,145,671.58 under statutory fee provisions); *Gascho v. Glob.*  
4 *Fitness Holdings, LLC*, 822 F.3d 269, 275–76 (6th Cir. 2016) (in a consumer class  
5 action where the “district court also correctly noted that several of the plaintiffs’  
6 claims involved fee shifting statutes, ... and that the purpose of such statutes is to  
7 induce a capable attorney to take on litigation that may not otherwise be  
8 economically viable,” it was not an abuse of discretion for the court to use a  
9 lodestar method of calculating fees of \$2.39 Million where the maximum fund  
10 value was \$15,500,430, but the amount paid class members was \$1,593,240); *In re*  
11 *Home Depot Inc.*, 931 F.3d 1065, 1078–80 (11th Cir. 2019) (awarding a class  
12 attorneys’ fee of \$15.3 million using the lodestar calculation including a multiplier  
13 of 1.3, finding that the case was a contractual fee-shifting case, and the  
14 constructive common-fund doctrine did not apply); *McKibben v. McMahon*, 2019  
15 WL 1109683, at \*11–15 (C.D. Cal. Feb. 28, 2019) (approving settlement in a jail  
16 class action involving disparate treatment of gay, bi-sexual and transgender  
17 inmates in programming and privileges, where the awarded fees exceeded the class  
18 monetary recovery; finding that the “lodestar approach is appropriate because this  
19 is a class action brought under fee-shifting statutes”<sup>3</sup> and observing that the “Ninth  
20 Circuit ... has repeatedly made it clear that the level of success achieved by a civil  
21 rights plaintiff should be measured by more than the amount of damages awarded”  
22 and that “it is common for statutory fees to exceed recovered damages”),

23 46. In this case, Plaintiffs’ counsel accepted a fee that amounts to about  
24 half of their calculate lodestar, which represents a substantial discount from what  
25 they would have claimed in a fee motion if they ultimately prevailed through  
26 litigation. Detailed fee records have been provided, and the Court does not

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28 <sup>3</sup> While the Court noted that this was true “where the primary relief sought is injunctive relief,” the foregoing authorities establish this is true also for damages cases.



1 question that the time identified was actually spent.

2 47. Plaintiffs' counsel also provided substantial evidence both from Class  
3 Counsel Barrett Litt and Carol Sobel, and from well know attorneys' fee expert  
4 Richard Pearl, as to the reasonableness of the rates used to calculate the lodestar,  
5 which range from as high as \$1200 per hour for Mr. Litt to \$420 for a 3-4 year  
6 attorney, in complex civil rights and other complex civil litigation.

7 48. In light of the substantial discount from the calculated lodestar to the  
8 fee settlement, and the absence of any class member objection to the fees, the  
9 Court sees no need to do a detailed lodestar analysis. Under Ninth Circuit law,  
10 hours should not be discounted by more than 10% without a detailed analysis.  
11 *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) ) ("district  
12 court can impose a small reduction, no greater than 10 percent—a "haircut"—  
13 based on its exercise of discretion and without a more specific explanation").  
14 Hypothetically, even if the Court were to find such a "haircut" appropriate here,  
15 and were it to further find that the calculated rates should be reduced across the  
16 board by 20%, the fee awarded in this case would still be substantially below that  
17 recalculated lodestar.

18 49. Thus, the Court finds the agreed upon fee reasonable.

## 19 **XI. GENERAL PROVISIONS**

20 50. All 85 claim forms, all of which were timely, shall be paid. All class  
21 members, whether or not they filed claims, shall be bound by this Order.

22 51. Except as otherwise provided in this Order, each party shall bear its  
23 own costs, expenses and attorneys' fees.

24 52. The Court reserves and maintains jurisdiction over this settlement and  
25 its provisions, and over the claims administration and distribution of the funds.  
26 Disagreements between the parties on any disputes or unresolved aspects of this  
27 Order as it relates to monetary relief shall be subject to mediation before the  
28 Magistrate Judge assigned to the case. If mediation is not successful, the matter shall

1 be brought to this Court for resolution.

2 53. The use of the masculine gender herein is construed to include the  
3 feminine and/or the neuter where applicable. The use of the singular herein is to be  
4 construed to include the plural where applicable. The use of the plural herein shall  
5 be construed to include the singular where applicable.

6 **XII. FINAL RESOLUTION**

7 54. The monetary relief provided for in this Order shall compensate for all  
8 alleged violations of rights and all claims by the Damages Class Members on  
9 matters alleged in the lawsuit under any theory of liability related to the events of  
10 November 26, 2014, at 6<sup>th</sup> and Hope Streets, that come within the Damages Class  
11 definition.

12 55. The Court hereby dismisses the lawsuit on the merits, with prejudice,  
13 and without further costs, with such dismissal subject only to compliance by the  
14 Parties with the terms and conditions of the Settlement Agreement, and this Final  
15 Order of Approval and Settlement.

16 56. The Damages Class Members, and their agents, attorneys and assigns,  
17 are hereby severally and permanently barred and enjoined, to the fullest extent  
18 permitted by law, from filing, commencing, instituting, maintaining, prosecuting,  
19 asserting or participating in a lawsuit or any other proceeding against the  
20 Defendants, including the employees, entities, agents, attorneys and insurers of  
21 Defendants and all Released Persons as defined in Section II, ¶ 4, involving or  
22 based on any of the claims encompassed by the complaint in this case, or in any  
23 way arising out of the facts alleged, or in any way related to the claims for relief  
24 pleaded, in the operative Complaint, which are fully incorporated herein by  
25 reference.

26 57. The Named Plaintiffs and each Class Member waive all rights or  
27 benefits which he or she now has or in the future may have under the terms of  
28 California Civil Code §1542, arising from, alleged in, or pertaining to the matters

1 alleged in the Lawsuit, specifically claims related to the events of November 30,  
2 2011, that come within the Damages Class definition, except as to monetary  
3 damages for those class members who have opted out. Section 1542 reads:

4 “A general release does not extend to claims which the creditor does  
5 not know or suspect to exist in his or her favor at the time of executing the  
6 release, which if known by him or her must have materially affected his or her  
7 settlement with the debtor.”

8 58. Each Defendant and other Released Person are hereby released from  
9 all claims for damages or other relief which any Class Member had, has, or may  
10 have in the future, against such Defendant or other Released Person in any way  
11 arising out of the facts alleged, or in any way related to the claims for relief  
12 pleaded, in the operative Complaint;

13 59. The Defendants, and all of their agents, attorneys and assigns, waive  
14 and release any and all claims or rights to pursue, initiate, prosecute, or commence  
15 any action or proceeding before any court, administrative agency or other tribunal,  
16 or to file any complaint regarding acts or omissions, by the Plaintiffs in any of the  
17 cases covered in this Settlement, by any Represented Individuals as defined herein,  
18 and by any Class Members, with respect to any matters related to the matters  
19 alleged in the lawsuit complaint, including waiver of the right to file a malicious  
20 prosecution action; and further, as it relates to this waiver or Release, expressly  
21 waive the provisions of California Civil Code §1542 recited in the previous  
22 paragraph.

23 60. Plaintiffs have not relied upon the advice of Class Counsel as to the  
24 legal and/or tax consequences of this settlement, the payment of any money by the  
25 Defendants or the distribution of the Settlement Funds.

26 61. Neither this Final Order of Approval, the Settlement Agreement, nor  
27 any of its terms or the negotiations or papers related thereto shall constitute  
28 evidence or an admission by any Defendant that any acts of wrongdoing have been

1 committed, and they shall not be deemed to create any inference that there is any  
2 liability therefore. Neither this Final Order of Approval and Settlement, nor the  
3 Settlement Agreement, nor any of its terms or the negotiations or papers related  
4 thereto shall be offered or received in evidence or used for any purpose  
5 whatsoever, in this or any other matter or proceeding in any court, administrative  
6 agency, arbitration, or other tribunal, other than as expressly set forth in the  
7 Settlement Agreement.

8 62. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the  
9 Court finds that there is no just reason for delay and therefore directs entry of this  
10 Final Order of Approval and Settlement. Inasmuch as this disposes of all claims  
11 asserted in the Lawsuit, the Court further directs the Clerk to enter an order of  
12 dismissal with prejudice pursuant to F.R.Civ.P Rule 41(a)(1)(2).

13  
14 DATED: \_\_\_\_\_, 2020

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15 John A. Kronstadt, Judge  
16 United States District Court  
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